FILE COPY

No. 576

In the Supreme Court of the United States

OCTOBER TERM, 1951

JOHN T. CALLAHAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 576

JOHN T. CALLAHAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the District Court overruling a demurrer (R. 8–9) is reported *sub nom. United States* v. *Newton* in 36 F. (2d) 425. The opinion of the Circuit Court of Appeals (R. 146–150) is reported in 53 F. (2d) 467.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered October 29, 1931 (R. 151), and a petition for rehearing denied November 27, 1931 (R. 151). The petition for certiorari was filed Decem-

ber 16, 1931, and was granted January 25, 1932. (R. 152.) Jurisdiction to issue the writ is conferred by Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether petitioner should have been prosecuted and sentenced under Section 593 (b) of the Tariff Act of 1922 upon the charge of fraudulently and knowingly importing intoxicating liquor.

STATUTES INVOLVED

Section 593 (b) of the Tariff Act of 1922 provides in part:

> If any person fraudulently or knowingly imports or brings into the United States, or assists in so doing, any merchandise, contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law, such merchandise shall be forfeited and the offender shall be fined in any sum not exceeding $5,000 nor less than $50, or be imprisoned for any time not exceeding two years, or both. * * * (Act of September 21, 1922, c. 356, Title IV, 42 Stat. 858, 982; U. S. C., Title 19, Sec. 497.)

The above section was repealed as of June 18, 1930, by the Tariff Act of 1930, c. 497, Secs. 651 (a), 653, 46 Stat. 590, 762 (U. S. C. Sup. V, Title 19, secs.

1651, 1653), but Section 651 (c) of that Act (p. 763) provided that—

> * * * All offenses committed and all penalties, under any statute embraced in, or changed, modified, or repealed by this Act may be prosecuted and punished in the same manner and with the same effect as if this Act had not been passed. * * *

A provision identical in language with that quoted above from Section 593 (b) of the Tariff Act of 1922 was included in the Tariff Act of 1930. (Sec. 593 (b), c. 497, 46 Stat. 751; U. S. C. Sup. V, Title 19, Sec. 1593.)

Section 3, Title II, of the National Prohibition Act, is in part as follows:

> No person shall * * * import * * * any intoxicating liquor except as authorized in this Act, and all the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented.
>
> Liquor for nonbeverage purposes * * * may be * * * imported * * * but only as herein provided, and the commissioner may, upon application, issue permits therefor * * *. (Act of October 28, 1919, c. 85, Title II, 41 Stat. 305, 308; U. S. C., Title 27, Sec. 12.)

Section 29, Title II, of the National Prohibition Act reads in part:

* * * * *

> Any person * * * who * * * violates any of the provisions of this title, for which offense a special penalty is not prescribed, shall be fined for a first offense not more than $500 * * *. (41 Stat. 316; U. S. C., Title 27, Sec. 46.)

STATEMENT

Petitioner and others were jointly indicted in the District Court for the District of Delaware upon two counts charging violations of Section 593 (b) of the Tariff Act of 1922. (R. 3–5.) The first count charged that certain named defendants, on November 10, 1927—

> did unlawfully, wilfully, feloniously, knowingly and fraudulently import and bring into the United States, and assist in importing and bringing into the United States, to wit, from St. Pierre-Miquelon into the territorial waters of the District of Delaware * * * certain merchandise, contrary to law, to wit, a large quantity of intoxicating liquor, to wit * * * all of said intoxicating liquors containing more than one-half of one per centum of alcohol by volume and being fit for use for beverage purposes—in violation of the provisions of Section 593, Subdivision B of the Act of Congress of September 21, 1922, known as the Tariff Act of 1922 * * *.

The count then alleged that the importations were illegal in that the merchandise was brought into the United States—

(a) Without a permit from the Commissioner of Internal Revenue as required by Schedule 8 of the Tariff Act of 1922.

(b) Without payment of the customs duties thereon as required by the aforesaid schedule.

(c) And in that said merchandise was imported and brought into the United States in violation of Section 3, Title II, of the National Prohibition Act.

In a separate paragraph of the count petitioner was charged with aiding and abetting the commission of the alleged offense. (R. 4.) The second count of the indictment was dismissed by the United States Attorney at the trial. (R. 124.)

Petitioner's demurrer to the indictment (R. 6–7) was overruled by the trial court on the ground that allegation (c) of the indictment, *supra,* stated an offense under Section 593 (b) of the Tariff Act of 1922 (R. 8–9).

The case, therefore, went to the jury upon the allegations of the first count charging the petitioner with aiding and abetting the importation of intoxicating liquor contrary to the provisions of Section 3, Title II, of the National Prohibition Act. Petitioner was convicted (R. 136) and sentenced to be imprisoned for a year and a day and to pay a fine of $2,500 (R. 141). Upon appeal the conviction was affirmed (R. 151) and a petition for rehearing denied (R. 151). This Court granted a writ of certiorari to review the judgment of the Circuit Court of Appeals. (R. 152.)

DISCUSSION

The Government opposed the issuance of the writ of certiorari on the ground that Section 593 (b) of the Tariff Act of 1922 was correctly held by the courts below to embrace the offense charged and to prescribe its penalty. Upon further investigation we are of the opinion that a contrary view may be taken with equal reason. The question is one of legislative intent. At least two approaches to the question are possible, leading to different results. Without urging that either result is correct, we have in this memorandum set forth for the convenience of the Court both lines of argument and submit the question to the Court for decision.

I

Section 593 (b) of the Tariff Act of 1922 punished the fraudulent or knowing importation of merchandise [1] "contrary to law." The indictment charged a violation of this statute and alleged that intoxicating liquor fit for use for beverage purposes had been imported in violation of Section 3, Title II of the National Prohibition Act, which prohibits such importation.

The phrase "contrary to law" appears in Section 593 (b) without any limitation in terms. On its face and without the aid of construction it would

[1] Section 401 of the Tariff Act provides (42 Stat. 948): "The word 'merchandise' means goods, wares, and chattels of every description and includes merchandise the importation of which is prohibited."

seem to mean contrary to any law. In this view any fraudulent or knowing importation contrary to any law is within the scope of the section. Hence importation in violation of the National Prohibition Act violates Section 593 (b).

It may be conceded that when Congress enacted Section 593 (b) it was not directly concerned with the amendment of the National Prohibition Act. Its purpose was to fix the penalty for importing merchandise contrary to law, including merchandise the importation of which was prohibited. But inquiry as to whether the prior law was under consideration is foreclosed by the language of the statute, which is clear and unambiguous and admits no limitation. There is no room in the language for construction or for the reading into the statute of an exception to its operation. The language must be presumed to mean what it says. Any other view would give rise to intolerable uncertainty in the application of laws plain and unmistakable in their meaning.

If, then, importation in violation of the National Prohibition Act is an offense under 593 (b), what effect is to be given to the fact that the punishment under the latter statute is the greater of the two? Section 3 of the National Prohibition Act contains no provision for punishment. There is an omnibus clause, Section 29 of Title II of the Act, which provides for the punishment of any person who violates any provision of the title for which no special pen-

alty is prescribed. Section 29 is a general clause, which by its very terms [2] seems to have no application if penalties are prescribed by any other statute. Section 593 (b), on the other hand, provides specific penalties for illegal importation, and was enacted later than Section 29. Under these circumstances the rule of construction which is applicable is that a specific later statute controls where inconsistent with an earlier general one.[3]

The argument outlined above was accepted by the District Court below. (R. 8–9.) We know of no decision to the contrary. The same result was reached in the following cases: *Kurczak* v. *United States,* 14 F. (2d) 109 (C. C. A. 6th); *Dickerson* v. *United States,* 20 F. (2d), 901, 903 (C. C. A. 8th); *Mulane* v. *United States,* 20 F. (2d) 903 (C. C. A. 8th); *Gorsuch* v. *United States,* 34 F. (2d) 279, 280 (C. C. A. 6th); *Krench* v. *United States,* 42 F. (2d) 354, 355 (C. C. A. 6th); *United States* v. *Cardwell,* 9 F. (2d) 146, 147 (E. D. Mich.). Compare *Wabash Ry. Co.* v. *United States,* 15 F. (2d) 363, 364 (C. C. A. 6th); *West* v. *United States,* 15 F. (2d)

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[2] Any person * * * who * * * violates any of the provisions of this title, for *which offense a special penalty is not prescribed*, shall be fined * * *" (Italics ours.)

[3] This position is strengthened by the express repeal in Section 644 the Tariff Act of 1922 of all laws and parts of laws inconsistent with its provisions and by the express inclusion in Section 593 (b), when read with Section 401, *supra*, footnote 1, of prohibited importations of goods, wares, and chattels of every description.

916 (C. C. A. 8th); *Charles Zimmerman Sons Co.* v. *Ferguson,* 16 F. (2d) 604, 605 (E. D. Mich.), rehearing denied, 18 F. (2d) 125. See also *Goldberg* v. *United States,* 277 Fed. 211 (C. C. A. 8th); *Biddle* v. *Moreno,* 279 Fed. 566 (C. C. A. 8th); *Bookbinder* v. *United States,* 287 Fed. 790 (C. C. A. 3d), certiorari denied, 262 U. S. 748; *Nounes* v. *United States,* 4 F. (2d) 833, 835 (C. C. A. 5th), certiorari denied, 268 U. S. 695. But see *Bruno* v. *United States,* 289 Fed. 649 (C. C. A. 1st.)

In *United States* v. *S. S. Sebastopol* the Circuit Court of Appeals for the Second Circuit recently held that Section 594 of the Tariff Act of 1922 prevails over Section 26 of the National Prohibition Act. The opinion, which is not yet reported, is printed in full in the Appendix, *infra,* pp. 14–20.

In this view of the case it is unnecessary to discuss the effect of the Willis-Campbell Act, since no question of conflict between the National Prohibition Act and *earlier* statutes is involved.

II

Section 593 (b) of the Tariff Act of 1922 was a reenactment without substantial change of the provisions of Section 3082 of the Revised Statutes, which had been on the books for many years before the National Prohibition Act. When Section 3082 was enacted, importation of intoxicating liquor for beverage purposes was not illegal. It was made so by Section 3 of the Prohibition Act, which, in Section 29, provided a penalty for the offense, milder

than that of Section 3082. Under such circumstances the only reasonable conclusion is that Congress intended the penalty for illegal importation of intoxicating liquor provided by Section 29 to be exclusive. *United States* v. *Yuginovich*, 256 U. S. 450.

A contrary view would ascribe to Congress an intent that the unlawful importation criminally punished by the National Prohibition Act should be additionally punished by the imposition of the penalty prescribed by Section 3082. Such a construction seems unreasonable. This Court has said (*Farmers', etc., National Bank* v. *Dearing*, 91 U. S. 29, 35):

> Where a statute creates a new offense and denounces the penalty, or gives a new right and declares the remedy, the punishment or the remedy can be only that which the statute prescribes.

Shortly after this Court decided the *Yuginovich* case, Congress enacted the Willis-Campbell Act, Section 5 of which provided (c. 134, 42 Stat. 222, 223):

> That all laws in regard to the manufacture and taxation of and traffic in intoxicating liquor, and all penalties for violations of such laws that were in force when the National Prohibition Act was enacted, shall be and continue in force, as to both beverage and nonbeverage liquor, except such provisions of such laws as are directly in conflict with any provision of the National Prohibition Act or of this Act; * * *

In *United States* v. *Stafoff*, 260 U. S. 477, this Court held that the Willis-Campbell Act reenacted the laws held in the *Yuginovich* case to have been impliedly repealed by the National Prohibition Act. None of the laws so dealt with were "directly in conflict with any provision of the National Prohibition Act" within the proviso of the Willis-Campbell Act. Section 3082, on the other hand, was directly in conflict with Section 29 of the National Prohibition Act in providing a greater penalty for the crime of illegal importation. Hence the Willis-Campbell Act did not revive Section 3082 in so far as applicable to importation of intoxicating liquor. In this respect the decision of the Circuit Court of Appeals below was in error. (R. 149-150.) See also *Bruno* v. *United States*, 289 Fed. 649 (C. C. A. 1st).

Thus it seems clear that until the Tariff Act of 1922 the importation of intoxicating liquor was not subject to the penalties imposed by Section 3082. Was this situation changed by the reenactment of Section 3082, without substantial alteration, as 593 (b) of the Tariff Act of 1922?[1] It seems unreasonable to say that Congress, merely by re-

[1] Although the language of Section 401 of the Tariff Act of 1922, *supra*, footnote 1, differs from that of its earlier prototype, Section 2766 of the Revised Statutes, which defined "merchandise" to include "goods, wares, and chattels of every description capable of being imported," the new definition was merely declaratory of the interpretation which had been given to the old one. See *United States* v. *Sischo*, 262 U. S. 165; cf. *Harford* v. *United States*, 8 Cranch 109.

iterating words which until then did not have the effect of punishing violations of Section 3 of the National Prohibition Act, gave them a new meaning. In dealing with a tariff measure Congress is concerned mainly with the minutiae of what articles should be taxed upon importation, and what rates of duty should be imposed. The reenactment without change of administrative or penal provisions of a tariff act should not in reason be given the effect of changing the punishment provided in an earlier statute for the importation there prohibited. Compare *United States* v. *La Franca,* 282 U. S. 568, 571, 572; *United States* v. *Regan,* 232 U. S. 37, 47.

We add a few words concerning the Jones Act (March 2, 1929, c. 473, 45 Stat. 1446), which provided increased penalties—

> * * * wherever a penalty or penalties are prescribed in a criminal prosecution by the National Prohibition Act, as amended and supplemented, for the illegal manufacture, sale, transportation, importation, or exportation of intoxicating liquor * * *.

The point is made that Congress provided in the Jones Act an increased penalty for importation of liquor in violation of the National Prohibition Act and its amendments and supplements[*] and that this is evidence that the importation of intoxicating

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[*] The Willis-Campbell Act was entitled "An Act Supplemental to the National Prohibition Act."

liquor is punishable only under the provisions of the National Prohibition Act. But this really begs the question, because if Section 593 (b) of the Tariff Act of 1922 be regarded as amending the National Prohibition Act[6] in that it increases the penalty provided by the latter for illegal importation of intoxicating liquor, then the effect of the Jones Act was merely to increase the maximum penalty provided by Section 593 (b) for such importation.

CONCLUSION

We have grave doubt as to the legality of the sentence imposed upon petitioner and submit that question to the Court for decision. In any view of the case, petitioner was convicted of importing intoxicating liquor in violation of Section 3 of the National Prohibition Act; and if the sentence imposed was not warranted because Section 593 (b) of the Tariff Act of 1922 has no application, then we submit that the case should be remanded to the District Court for sentence under Section 29 of the National Prohibition Act.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.
G. A. YOUNGQUIST,
Assistant Attorney General.
JOHN J. BYRNE,
Attorney.

MARCH, 1932.

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[6] Compare *United States* v. *La Franca*, *supra*, 282 U. S. 568, 575, 576.

APPENDIX

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, LIBELLANT-APPELLANT

v.

BRITISH S. S. "SEBASTOPOL," HER ENGINES, Tackle, Apparel, and Furniture, etc., Claimant-Appellee

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UNITED STATES OF AMERICA, LIBELLANT-APPELLANT

v.

TWO MASTED AUXILIARY SCHOONER "RUTH MILdred," Length 82 feet, Beam 21.5 feet, Depth 8.1 feet, Official No. 222218, Claimant-Appellee

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Before: L. HAND, SWAN, and AUGUSTUS N. HAND, *Circuit Judges*

Appeals from the District Court of the United States for the Southern District of New York

Libels of information in the admiralty were filed by the United States, one seeking forfeiture of the British steamer *Sebastopol* for violation of the customs laws, the other seeking forfeiture of the American Schooner *Ruth Mildred* for violation of the navigation laws. In each suit a decree was

entered dismissing the libel, and the libellant has appealed. Decree as to the *Sebastopol* reversed; decree as to the *Ruth Mildred* affirmed.

For opinion below see 47 F. (2d) 336.

SWAN, *Circuit Judge:*

These appeals have been argued together and may be disposed of in a single opinion, although, as will appear, somewhat different considerations are involved and have led us to different results in the two suits. The general problem presented is whether a vessel which is discovered in the illegal transportation of liquor within territorial waters must be proceeded against under sec. 26 of Title II of the National Prohibition Act (27 U. S. C. A., sec. 40) rather than for a violation of the customs or navigation laws.

The libel against the *Sebastopol* sought to enforce against her, pursuant to section 594 of the Tariff Act of 1922 (19 U. S. C. A., sec. 498), penalties incurred by her master under section 584 of said Act (19 U. S. C. A., sec. 486) by reason of false manifesting of the cargo. Within territorial waters she was stopped and boarded by a coast guard officer, who, upon discovery that her cargo was falsely manifested, arrested the master and seized the vessel. The unmanifested cargo consisted of 4,841 cases of Scotch whiskey. Following seizure of the vessel, the coast guard officer signed a complaint charging the master and crew with conspiracy to violate the National Prohibition Act as well as the Tariff Act of 1922. Nothing appears as to the ultimate disposition of this complaint. These facts, the claimant contended, disclosed that the vessel was engaged in the illegal transportation of liquor and required the government to proceed against her

in accordance with section 26 of Title II of the National Prohibition Act (27 U. S. C. A., sec. 40) instead of under the Tariff Act. The district court so held, dismissing the complaint.

That the seizure was not made by a prohibition officer would not preclude the government from proceeding under section 26. *Dodge* v. *United States,* 272 U. S. 530; *Commercial Credit Co.* v. *United States,* 276 U. S. 226. That section preserves the rights of innocent owners or lienors; while forfeiture under the Tariff Act proceeds without regard to innocent interests. It is true that executive clemency may remit the forfeiture in favor of innocent persons (19 U. S. C. A., secs. 520, 532), but mitigation by grace is not the equivalent of statutory immunity from forfeiture. The two procedures are, therefore, in direct conflict when applied to the forfeiture of a vessel seized within territorial waters while transporting unmanifested liquor; and the Prohibition Act, were it the later enactment, would prevail, as the Supreme Court held it did with respect to Revised Statutes, sec. 3450. *Richbourg Motor Co.* v. *United States,* 281 U. S. 528. But it is to be observed that the particular sections of the Tariff Act under which the libel against the Sebastopol was framed do not declare a forfeiture of the vessel; they merely impose a lien upon her for the payment of penalties incurred by the master. It may well be argued that a proceeding to enforce a lien under the Tariff Act is not in direct conflict with the proceeding to forfeit the vessel contemplated by section 26. Only by accident is it true in the case at bar that the penalty incurred is so great as to exhaust the entire value of the vessel and result in her

forfeiture. The two statutes are to be read so that both may stand, if possible, and we are disposed to say that no direct conflict appears when only the lien of a penalty is being enforced.

But if there be a direct conflict, the Tariff Act must prevail over sec. 26. It is the later enactment and contains in sec. 644 an express repeal of "all laws and parts of laws inconsistent with the provisions of this Act." In reaching this conclusion we are not unmindful of the canon of construction that an earlier specific statute may be considered an exception to a later general statute broad enough in terms to include the subject matter of the former; but we do not think it applicable here, because the Tariff Act itself deals specifically with the importation of liquors in violation of the customs. Paragraph 813 of schedule 8 reads as follows:

> No wines, spirits, or other liquors or articles provided for in this schedule containing one-half of 1 per centum or more of alcohol shall be imported or permitted entry except on a permit issued therefor by the Commissioner of Internal Revenue, and any such wines, spirits, or other liquors or articles imported or brought into the United States without a permit shall be seized and forfeited in the same manner as for other violations of the customs laws.[7]

The forfeiture thus directed is provided for in section 584, which declares, among other things, that unmanifested merchandise (which by section 401 "includes merchandise the importation of which

[7] Schedule 8 also provides (Par. 801 (a), 46 Stat. 689): "Nothing in this schedule shall be construed as in any manner limiting or restricting the provisions of the National Prohibition Act, as amended." (Footnote ours.)

is forbidden") consigned to the master shall be subject to forfeiture. Under the doctrine of The Mistinguette, 27 F. (2d) 738 (C. C. A. 2) the liquor on the *Sebastopol* was consigned to her master. It was therefore forfeitable under section 584, and it seems clear that the other provisions of this section which impose a penalty upon the master equal to the value of the unmanifested cargo are likewise applicable although the cargo be liquor. Similarly, as to the ancillary section 594 which subjects the vessel to a lien for the penalties incurred by the master. Therefore, notwithstanding the abovementioned canon of interpretation and despite the statement in paragraph 801 of the schedule that nothing in this schedule shall be construed as limiting or restricting the provisions of the National Prohibition Act, we can not interpret sections 584 and 594 otherwise than as applying specifically to an unmanifested cargo of intoxicating liquor and as superseding pro tanto the earlier enacted section 26, if a conflict exists. Consequently the libel brought against the *Sebastopol* was erroneously dismissed.

Different considerations are applicable to the schooner *Ruth Mildred*. She was licensed to engage in the fisheries and was charged with violating her license by engaging in the illicit liquor trade. Forfeiture was sought under Revised Statutes, sec. 4377. Violation of her license results under this statute in forfeiture of the vessel without regard to the innocence of her owner. This section antedates the National Prohibition Act and is therefore superseded by section 26 so far as the two statutes are in direct conflict. As already noted with respect to the Tariff Act, the possibility of

executive clemency under the provisions of Revised Statutes, section 5294, will not avoid the conflict. Dismissal of the libel against the *Ruth Mildred* was therefore right provided she was seized under circumstances which rendered section 26 applicable.

The schooner was trailed by a coast guard vessel from a point in Long Island Sound until she tied up at a dock in New York harbor. The crew and master then left her, but a few minutes later the master returned and, on being informed that the coast guard vessel was going to stand by until the schooner's cargo was unloaded, he confessed that most of his cargo was liquor. Thereupon he was placed under arrest, the boat was seized, and a complaint filed, charging the master with conspiracy to violate the National Prohibition Act and the Tariff Act of 1922. Nothing further is disclosed regarding this proceeding.

Section 26 directs that when a person is discovered in the act of illegally transporting liquors in any water craft, the officer of the law shall seize the liquors "therein being transported contrary to law" and shall take possession of the boat. When the schooner and her cargo were seized she had come to rest at the wharf, and it may be argued with some plausibility that the transportation was over so that section 26 no longer applied. *United States* v. *One Buick Automobile,* 33 F. (2d) 353 (S. D. Ga.); cf. (before transportation began) *United States* v. *One Ford Coupe Automobile,* 272 U. S. 321; *United States* v. *One Studebaker Coach Automobile,* 32 F. (2d) 886 (C. C. A. 9). But we do not think the section should receive so technical a construction. Here the master was discovered in the act of transportation, although knowledge

of the nature of his cargo was not obtained until his subsequent confession. In our opinion his possession of the liquor continued to be a possession incident to transportation, and the facts were sufficient to satisfy the condition precedent to making a seizure under section 26. See *Commercial Credit Co.* v. *United States*, 33 F. (2d) 228 (C. C. A. 9); *United States* v. *One Chevrolet Automobile*, 21 F. (2d) 277 (D. Ala.), aff'd as *United States* v. *General Motors Acceptance Corp.*, 25 F. (2d) 238 (C. C. A. 5); *United States* v. *One Buick Coach Automobile*, 34 F. (2d) 318 (N. D. Ind.). Accordingly, we affirm the decree dismissing the libel as to the *Ruth Mildred*.

The problem presented by these appeals has been the subject of considerable diversity of opinion in the various circuits. An authoritative decision may soon be expected, as the Ninth Circuit has certified a similar question to the Supreme Court. *Gen. Motors Acceptance Corp.* v. *United States*, Nov. 23, 1931. Pending this decision any elaborate consideration of the authorities seems unnecessary. It will suffice merely to cite a few of them. As tending to favor the contentions of the appellant, see *The Pilot*, 43 F. (2d) 491 (C. C. A. 4); *United States* v. *One Reo Coupe Automobile*, 46 F. (2d) 815 (D. Mass.); *The Daisy T*, 48 F. (2d) 370 (D. Del.); contra, *Colon* v. *Hanlon*, 50 F. (2d) 353 (C. C. A. 1); *Commercial Credit Co.* v. *United States*, 53 F. (2d) 977 (C. C. A. 5); *United States* v. *One Studebaker Automobile*, 45 F. (2d) 430 (D. Ariz.).

Decree in No. 279 reversed and decree in No. 280 affirmed.

U. S. GOVERNMENT PRINTING OFFICE: 1932